**HyperCube**

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October 20, 2010

***VIA ELECTRONIC FILING*** **EX PARTE**

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re:** *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92

Dear Ms. Dortch:

On behalf of HyperCube Telecom, LLC ("HyperCube"), I respectfully submit these comments regarding the issue of traffic stimulation or "traffic pumping" and the related suggestions by other filers in the above referenced docket that the Commission should deny LECs the right to collect intercarrier compensation on traffic subject to revenue sharing arrangements. Attachment A provides background on HyperCube and the products and services it offers. HyperCube does not participate in any manner of "traffic pumping," or traffic stimulation, and HyperCube is not supportive of such business practices. As a competitive tandem services provider, HyperCube's business does not influence end user calling patterns.

HyperCube provides competitive transport of switched access traffic, as well as local traffic, from networks of its carrier customers to interexchange carriers and LECs. HyperCube performs switching, transport and database queries, among other services. HyperCube competes directly with traditional networks for this traffic. The tandem switching marketplace is highly competitive. Competition generated by market participants such as HyperCube and others is driving down both originating and terminating switched access rates for all carriers, which ultimately benefits consumers. Carriers in this market must not only be highly efficient, but must also perform flawlessly in order to remain competitive. Efficient carriers are also able to employ certain strategies to attract more traffic to their networks, providing the opportunity to reduce costs further, by employing revenue sharing approaches. This is consistent with the FCC's statement in the *Eighth Report and Order* that "the primary effect of the commission payments [to institutions that are sources of 8YY traffic] appears to be to create a financial incentive for the institutions to switch from the incumbent to a competitive service provider."[1] The revenue sharing arrangements employed by HyperCube are intended to create a financial incentive for target customers to switch from an incumbent or traditional carrier to HyperCube. Furthermore, certain carriers require some form of compensation from other carriers to interconnect their networks for purposes of traffic exchange.

Under certain proposals put forth by other carriers, this type of competitive strategy may be prohibited. Such proposals suggest that the FCC should prohibit carriers from imposing access

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[1] *Eighth Report & Order*, CC Docket No. 96-262, FCC 04-110 (May 18, 2004), ¶ 70.

charges on traffic that is subject to a "revenue sharing arrangement." The US Telecom proposal of October 8, 2010, for example, defines a "revenue sharing arrangement" as an arrangement between a LEC and a "Calling provider" in which the Calling provider receives net payments from the LEC. "Calling provider" is in turn defined as "any entity, including any affiliate of a LEC, that promotes or advertises to end users telecommunications services or information services and that provides or uses a LEC's telephone numbers for such services to be routed to or through a LEC's local exchange." This type of proposal may have the unintended consequence of disrupting healthy competition by failing to exclude from the definition of "Calling provider" the carrier whose network initiates a call.

HyperCube does not believe that prohibiting a LEC from employing revenue sharing approaches with another carrier that contributes to call origination is an effective solution for the access stimulation issue. For example, the FCC found that "it is not unlawful *per se*" for an interexchange carrier to pay commissions to private payphone companies "to compensate them for their costs in making operator services available to the end user."[2] Indeed, in meet point billing arrangements that have been used for decades, a LEC often bills for and collects intercarrier compensation and shares the revenue with another carrier that contributes to the origination (or termination) of a call. The FCC has never prohibited such arrangements, and HyperCube does not believe that a prohibition of this practice will have an impact on curbing traffic stimulation. The Commission should take care to avoid inadvertently upsetting such revenue sharing arrangements that do not stimulate access traffic and that are beneficial to the participating network and its customers. Furthermore, the imposition of a prohibition on revenue sharing upon LECs would have the unintended consequence of placing LECs at a distinct disadvantage in the marketplace relative to the interexchange or enhanced service provider carriers, unless of course the LEC is fortunate enough to have such other carriers as affiliates.

HyperCube believes that the issues associated with "traffic pumping" that require Commission action relate to the practice of the stimulation of traffic that would not take place absent an influence on the end user's placing of calls, combined with carrier exploitation of high rural access rates.[3] In concert with this inducement to cause end users to place calls, the calls are routed through carriers entitled to charge high access rates associated with rural LECs,[4] so as to maximize the access rates imposed. The issues associated with these access stimulation schemes have little if anything to do with traffic imbalance and revenue sharing arrangements, as others have implied.

By contrast, revenue sharing arrangements with carriers, such as those employed by competitive tandem service providers, are invisible to the calling party, and thus, do not stimulate the

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[2] Memorandum Opinion and Order, *In the Matter of AT&T's Private Payphone Commission Plan*, 7 F.C.C. Rcd.7135 at ¶ 8 (rel. Nov. 4, 1992).

[3] HyperCube believes that the problems associated with high rural access rates can best be addressed by access rate reform, as the Commission did with high CLEC access rates in the Eighth Report & Order, CC Docket No. 96-262, FCC 04-110 (May 18, 2004).

[4] By contrast, non-rural competitive carriers are limited by the Eighth Report and Order to charging ILEC rates for interstate access service, and interexchange carriers typically report through their quarterly PIU factor submissions to HyperCube that over 85% of switched access traffic is jurisdictionally interstate, thereby subjecting the predominance of such traffic to the benchmark and further proving the effectiveness of the Commission's existing mechanisms.

calling party to place additional calls. The FCC addressed the issues relating to sharing of originating access revenue for 8YY calls in its *Eighth Report & Order*, CC Docket No. 96-262, FCC 04-110 (May 18, 2004), stating the following:

> As the IXCs contend, some competitive LECs may have agreed to share with some customers generating a high volume of 8YY traffic a portion of the access revenues that it receives in connection with the traffic. We are not persuaded, however, that the existence of these arrangements necessarily leads to the problems that the IXC commenters attribute to them. Specifically, we are not convinced that the commission arrangements that competitive LECs may have entered into with 8YY generators necessarily affect the level of traffic that these customers, typically universities and hotels, generate. The IXCs have failed to demonstrate that commission payments to 8YY generators such as universities or hotels translate effectively into incentives for the individuals who actually use those facilities to place excessive or fraudulent 8YY calls. The commission payments challenged by the IXCs go to the hotel or university itself, not to the students or hotel guests who place the bulk of the 8YY calls from these institutions. Accordingly, it does not appear that these commissions create any incentive for those actually placing the calls artificially to inflate their 8YY traffic. Rather, as the competitive LECs contend, the primary effect of the commission payments appears to be to create a financial incentive for the institutions to switch from the incumbent to a competitive service provider.[5]

In determining not to take action with respect to 8YY calls, the FCC correctly observed that the commissions paid by carriers to customers generating a high volume of 8YY traffic do not appear to "create any incentive for those actually placing the calls artificially to inflate their 8YY traffic." The same is true with respect to the type of arrangements into which HyperCube enters. There is therefore no reason for the FCC to include in a rule or order any language that would have the effect of prohibiting collection of switched access revenue simply because an access provider made commission payments to the carrier the originating the call.

Finally, there have been proposals made in this docket to prohibit revenue sharing by carriers altogether. HyperCube believes that this would truly be analogous to "throwing out the baby with the bathwater". Revenue sharing is a fundamental and economically healthy part of the telecommunications industry and our capitalist system. Other commenters have shown multiple respects in which revenue sharing is ingrained in the telecommunications industry.[6] Indeed, the FCC itself, in recommendation 5.4 of the National Broadband Plan, has proposed revenue sharing with respect to the proceeds of spectrum auctions. In Attachment B, HyperCube provides evidence

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[5] *Id.* (footnotes omitted).

[6] *E.g.*, letter of Russ A. Buntrock, Esq., counsel for Bluegrass Telephone Co., Inc. to Ms. Marlene Dortch, Docket No, 07-135, September 16, 2010, at 2-6.

regarding the pervasive nature of revenue sharing throughout the economy and support for revenue sharing as a welfare enhancing economic mechanism.

Sincerely,

Robert W. McCausland
Senior Vice President,
Regulatory & Government Affairs,
HyperCube Telecom, LLC

cc: Daniel Ball
Randy Clarke
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**ATTACHMENT A**

# Competitive Tandem Services

## About Us:

HyperCube is a premier provider of local and national tandem services to carriers throughout the U.S. The company carriers billions of minutes per month for providers ranging from wireless carriers and wireline CLECs to cable telephony providers and Voice over Internet Protocol (VoIP) providers.

## The Origins of the Competitive Tandem System

The Telecom Act of 1996 and technological developments led to an explosion in competition among telephone service providers, forcing traditional providers to compete with a range of new and innovative companies using varied network platforms. With all of those providers came new and varying needs. HyperCube truly fulfills such needs by bridging the gaps between such companies' networks.

## HyperCube and the Next Generation of Competitive Tandem Technology

HyperCube offers a tandem infrastructure that reflects the new reality of a more modern competitive telephony environment – truly the "next generation" of modern tandem technology!

## HyperCube's Network:

- Fully redundant, fault-tolerant and self-healing
- Minimum of two paths per hub site
- Flexible grooming, add, drop
- Protected and diverse
- Supports TDM or IP interconnection

## Products:

- **Toll-Free Origination (TFO)**: transport to IXCs of toll-free originated traffic per RespOrg and number routing parameters
- **Local Transit:** transport local transit traffic between wireless carriers, CLECs, IXCs, VoIP and cable networks in markets throughout the U.S.
- **Carrier Termination**: transport and terminate 1+ toll traffic utilizing Hypercube's soft switch platform

## Hypercube Provides Valuable Solutions

- Technology-agnostic solutions for competitive and traditional carriers in markets nationally
- Fast, efficient and diverse network interconnection alternatives (both TDM & IP)
- Significant cost savings over traditional-carrier offerings
- Modern web-based customer portal for traffic reporting and service management
- And more!

## ATTACHMENT B

Some common examples of revenue sharing in the U.S. capitalist economy

Royalties paid by book publishers to authors.
Royalties paid by recording companies to artists and composers.
Royalties paid by oil drillers to landowners.
Royalties paid by patent licensees to patent licensors.
Commissions paid to brokers and auctioneers.
Sports leagues sharing of gate, television, and concession revenue among teams.
Shopping center tenants sharing of revenue with lessors in the form of percentage rents.
Movie exhibitors sharing of receipts with movie distributors.
Movie producers sharing of revenues with actors, directors, screenwriters.
Airports sharing of revenues from parking and concessions with airlines.
Mutual fund providers sharing of fees with administrators of retirement plans.
Video rental stores sharing of rental receipts with movie distributors.
Online advertisers sharing of revenues with online content providers.
Online search engine sharing of advertising revenues with consumers.

Economic analysis of welfare benefits of some types of revenue sharing arrangements

Airport sharing with airlines the airport's revenue from parking, leasing to retail stores, and catering is likely to improve social welfare, encourage the airlines to expand output and benefits travelers.[1]

The sharing of revenues from ticket sales, television rights and marketing rights among professional football teams was introduced to enable the teams "to provide a product that, as a whole, was much more valuable than the sum of its parts."[2]

The sharing of revenue from ticket sales among sports teams increases social welfare, benefits consumer surplus and thus benefits consumers.[3]

Movie exhibitors' sharing of box office revenues with movie distributors is more efficient than fixed price contracts and increases overall welfare because sharing improves the exhibitor's incentive to exhibit the movies for the right length of time from the distributor's perspective,

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[1] *Effects of Airport Concession Revenue Sharing on Airline Competition and Social Welfare*, 44 Journal of Transport Economics and Policy 119 at 120, 121, 125. 127. 135 (May 2010).

[2] *Revenue Sharing and the Salary cap in the NFL: Perfecting the Balance Between NFL Socialism and Unrestrained Free-Trade*, 8 Vand. J. Ent. & Tech. L. 641, 642 (2006).

[3] Helmut Dietl and Markus Lang, Institute for Strategy and Business Economics, University of Zurich, *The Effect of Gate Revenue-Sharing on Social Welfare* (June 2007) (available at http://www.isu.uzh.ch/static/ISU_WPS/60_ISU_full.pdf.)

reduces the likelihood that the exhibitor will request a price adjustment, and reduces the resources exhibitors must spend evaluating each movie before contracting to exhibit it.[4]

Sharing of movie rental revenues by video rental chain with movie distributors helped the video rental chain increase its market share and increased the overall profitability of the video rental industry.[5]

Revenue sharing, together with predictive pricing, "can be very effective tools" for online advertising networks to attract publishers and advertisers.[6]

Internet search engine sharing advertising revenue with consumers by providing cash to them based on purchasers made from advertisers is a "bold" and "brilliant" move.[7]

Mutual fund providers share fees with administrators of defined contribution retirement plans. "Revenue sharing payments from the fund complexes in today's bundled services products are widely viewed as a cost-efficient means of supporting the broad range of distribution, shareholder account and administrative services that are inherent in offering and maintaining these products."[8]

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[4] Ricard Gil and Francine Lafontaine, University of California at Santa Cruz, *Using Revenue-Sharing to Implement Flexible Pricing: Evidence from Movie Exhibition Contracts* (September 2009) (available at http://people.ucsc.edu/~rgil/GilLaf_RevSharing_Sep09.pdf.

[5] Zhaoqiong Qin and Jian Yang, New Jersey Institute of Technology, *Analysis of a Revenue-Sharing Contract in Supply Chain Management* (September 2004) at 2 (available at http://www-ec.njit.edu/~yang/research/rev-contract/rev-contract-2.pdf.)

[6] Bobji Mungamuru and Hector Garcia-Molina, Stanford University, *Predictive Pricing and Revenue Sharing* (July 2008) at 12 (available at http://ilpubs.stanford.edu:8090/844/1/2008-28.pdf)

[7] Michael Arrington, *The Empire Strikes Back: Our Analysis of Microsoft Live Search Cashback*, Techcrunch (May 22, 2008) (available at http://techcrunch.com/2008/05/22/the-empire-strikes-back-our-analysis-of-microsoft-live-search-cashback/).

[8] Christopher M. Grinnell, *ERISA Disclosure and Fiduciary Duties for Financial Service Providers Fees and Revenue Sharing in Bundled Services Products,* in UNDERSTANDING THE SECURITIES PRODUCTS OF INSURANCE COMPANIES 2009, at 815 (PLI Commercial Law and Practice Course, Handbook Series no. 911, 2009) (available on WESTLAW).